

Part 201 Administration Subgroup Meeting Summary

*November 3, 2006, 9 AM–Noon
Public Sector Consultants
Lansing, Michigan*

Work Group Members Present

Brenda Brouillet, MDEQ RRD, Saginaw District Office
Dale Corsi, STS Consultants Ltd.
Carrie Olmstead, MDEQ RRD, Compliance and Enforcement Section
Flo McCormack, Michigan Association of Counties
Gary Klepper, Conestoga-Rovers & Associates
Al Johnston (for Greg Rose), Daimler Chrysler Corporation
Jeffrey Hawkins, Envirollogic Technologies Inc.
Steve Luzkow, LaSalle Bank Midwest
Tom Wilczak, Pepper Hamilton, LLP

Staff Present

Julie Bennett and Shivaugn Rayl, Public Sector Consultants

Public Present

Bob Wagner, MDEQ RRD, Grayling District Office
Abed Houssari, DTE Energy
Melissa Trustman, Detroit Regional Chamber

Welcome and Introduction

Julie Bennett from Public Sector Consultants welcomed the members of the Administration Subgroup of the Part 201 Phase II Discussion Group. Personal introductions followed.

Points Raised by Part 201 Discussion Group

Bennett reviewed the issues raised by the 2005 Part 201 Roundtable related to program administration (as outlined in Attachment B) and asked if there is anything missing in that document that this group would like to address. The group agreed that the key issues are adequately covered in Attachment B.

Part 201 “Customers” and “Customer Service Areas”

To help provide information on Part 201 and a foundation for discussion, Brenda Brouillet and Carrie Olmstead of MDEQ RRD explained the people/groups (i.e., customers) that Part 201 is designed to serve and the different program areas in which they are served (i.e., customer service areas). Customers include developers, liable parties, purchasers of property, businesses, and the general public. Customer service areas include cleanup, redevelopment, state-funded cleanup of orphaned sites, public outreach, site listing/scoring, complaint and emergency response, and the Part 213 audit cleanup program.

Bennett asked the group if it would be helpful to structure the rest of the discussion using the customer service areas (CSAs) described by Brouillet and Olmstead, and to prioritize the cleanup and redevelopment CSAs. The group agreed.

Goals/Desired Results

Bennett explained the process for the remainder of the meeting. Subgroup members will describe their desired results for the Part 201 program by CSA, beginning with the prioritized areas of cleanup and redevelopment. The following desired results were offered (*followed by related discussion in italics*):

Cleanup Desired Results

- Sites are closed. *Closure of a site was described by the subgroup as many things: agency satisfaction, a restored resource, risk abatement, and an end to liability. There was recognition that sites that have been cleaned up to residential standards have met all four of the definitions of closure listed, and are out of the Part 201 program. All other sites have ongoing obligations because there is still some level of contamination at the site. There was some support for partial or tiered closure that would accomplish agency satisfaction and an end to liability, but probably would not restore the resource fully or totally abate the risk. These partially closed sites would not be used for residential purposes, but if a developer wanted to fully clean up the site for a profit-making venture (i.e., condos), he would be free to do so, but that would not involve the party that got a tiered closure earlier.*
- The administrative process to close sites is efficient, certain, and consistent with clear lines of decision making and a transparent closure process. *DEQ staff are not sufficiently specialized to be efficient; instead, they must be all things to all customers under Part 201. A suggested remedy was for agency staff to delineate duties, prioritize projects, and focus resources on the essentials of the Part 201 program. This would mean deemphasizing research and Op memos in the department and refocusing on core, statutorily required elements of Part 201 cleanup.*
- The risk-reduction activities (and associated costs) required to close sites are commensurate with the benefit they will achieve. *Cost effectiveness was important to the group, described as getting the most risk reduction “bang” for each “buck” spent under Part 201.*
- DEQ staff is empowered to close more sites. *Because the DEQ has the burden of protecting the public health, safety, and welfare, as well as the natural resources of the state, the department is cautious in the site closure process. This causes delays. One suggestion made was to provide cover for the DEQ by considering closure a good faith decision based on available information. Another suggestion made was to allow third-party review of some submitted documents if a developer can and wants to pay the additional cost in order to advance his project. Then the agency role would be more akin to an auditor function, and the decision-making burden would shift away from the DEQ and onto the third party. Concerns were raised that consultants do not have the experience and expertise that agency staff bring to the review process. Further, state contracting requirements can be onerous and may ensure that the low bidder, not the most qualified party, gets the contract. Conversely, if the developer were at liberty to hire an environmental professional for plan review, that would avoid the state subcontract requirements and would establish a competitive market for reputable environmental professionals.*

- Risks are identified and sources removed/controlled up front. *There was general agreement that many of the problems that cause delays in the process could be eliminated by having early meetings between the DEQ and customers to identify and address sources up front.*
- Affected parties are more involved in the site closure process. *Specific consideration was given to decision-making oversight through the Quality Review Team (QRT) process. The benefit of the QRT process mentioned was senior review of complex or original approaches to cleanup. The QRT process is also intended to create continuity of knowledge, a full-state perspective, and consistency of decision making in the program. It was proposed that plan reviews should include interested parties at the beginning of the process. Some members even commented that a mandatory meeting should be held between district staff and interested parties before submission of anything for review in order to establish a team-oriented environment and avoid any potential conflicts before they advance to a form that receives a rejection notice from the agency.*
- Interaction between DEQ staff and customers is less adversarial. *The internal decision-making process and the appeals process were assessed. The current appeals process is informal and consists of letters and responses, which creates an adversarial relationship by its definition. Suggestions were made that the entire administrative process could be made more efficient and less adversarial if it were more collaborative, eliminating the need for an appeals process.*
- DEQ staff have a reliable method for prioritizing work. *The workload of the agency and prioritization of its tasks were discussed at length. Agency staff have no way to know what their workload will be for the upcoming year, and realistically, the DEQ doesn't have resources to hire additional staff even if the workload was identified. It was suggested that the agency staff have no meaningful way of prioritizing their workload. Questions about the usefulness of site scores in determining priority were raised. Commentary indicated that site scores are useful for prioritizing state-funded cleanups and educating the public, but that brownfield redevelopment should be in a separate category and should receive priority because of fee-mandated deadlines and the interests of economic development and commerce. Fees associated with filing do not pay for the cost of staff oversight. One suggestion offered was to allow increased filing fees that would cover staff costs and would give these projects a high-priority status.*
- Emergency response and redevelopment projects are given greater priority than non-emergency cleanup/risk reduction projects. *It was recognized that economics have to play a certain role in this process. Brownfield redevelopment is essential to the current private sector economy in the state. Due to Michigan's tenuous economic situation, it was suggested that economic incentives for redevelopment should be a priority of the program. It was also mentioned that natural resource degradation would be an economic disaster for the state. Consensus was that the legislature must be made aware of the impacts of underfunding on the public.*

Redevelopment

Many of the same results mentioned above apply here. The following are additional desired results:

- Redevelopment occurs in brownfields vs. greenfields. *The program needs to be administered in a way that encourages development in brownfields.*

- The transition for industrial to residential land use classification is easier.
- Risks are identified and sources removed/controlled up front. *It was mentioned that better source cleanup at the beginning of the process would make brownfield approvals easier, would protect the public health, and would be less costly over the long run.*
- Emergency response and redevelopment projects are given greater priority than non-emergency clean up/risk reduction projects. *It was suggested that brownfield redevelopment applications should be streamlined and should have review process that separates them from other cleanups.*

Next Steps

The next meeting was set for November 27, 2006, from 9:00 AM to 12:00 PM at the Michigan Association of Counties building in Lansing.

Members were asked to choose their top three “customer service area” priorities for program reform before the next meeting.

DEQ staff were asked to provide information about the level of effort/expenditure spent on listing sites.